UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1058

September Term, 2014

CHARLES J. GUILIANO, et al.

v.

THOMAS A. GORE, et al.

Zarnoch,
Berger,
Nazarian,

JJ.

Opinion by Zarnoch, J.

Filed: June 25, 2015

Appellant Charles J. Guiliano, Personal Representative of the Estate of Pearl May and Charles Cataldo Guiliano challenges a determination made by the Register of Wills for Saint Mary's County, in a ruling subsequently upheld by the County Orphans Court and then the Circuit Court for Saint Mary's County, that "rest, residue and remainder" of the estate would be distributed pursuant to the laws of intestacy. Although a provision in the will for husband and wife's reciprocal gifts fails to bequeath the residuary estate, we find controlling other language in the will that expresses an intent to leave the residuary estate to the children and states the specific shares for each to receive. Accordingly, we reverse and remand.

FACTS AND PROCEEDINGS

Pearl May Guiliano and Charles Cataldo Guiliano (Charles C.) had five children: Appellant, Thomas A. Gore, Frank R. Gore, Joyce M. Phillips, and Nina T. McClanahan. Nina was Pearl's step-daughter but was never adopted.

On September 23, 1998, Pearl and Charles C. executed a "Joint and Reciprocal Last Will and Testament of Charles Cataldo Guiliano and Pearl May Guiliano." The will provided for two special "gifts" that were identical as to Charles C. and Pearl. First, Charles C. gave and bequeathed his "tools" to Appellant. Second, Charles C. gave, devised, and bequeathed all title, right and interest to "Lot 165, Golden Beach, St. Mary's County Maryland, (Liber 057 folio 520)" and "Lot 164, Golden Beach, St. Mary's County Maryland, Liber 072 folio 163" to Appellant and Nina, respectively.

> HUSBAND'S GIFT TO WIFE: I, Charles Cataldo Guiliano, do give, devise and bequeath to my beloved wife, Pearl May Guiliano my entire estate and worldly possessions, real, personal and mixed, of whatsoever nature and

> wheresoever situated, . . . *provided* the said Pearl May Guiliano survives me and does not die with in [sic] or as the result of a common accident or disaster and is in being thirty (30) days after my death.
>
> All the *rest, residue and remainder or my estate* . . . I, Charles Cataldo Guiliano, do give, devise and bequeath to my beloved wife, Pearl May Guiliano.

(Emphasis added). Pearl gave the same under the same conditions to Charles C.

The will also contained what was labeled a "Joint Deaths" provision stating:

> JOINT DEATHS: If we . . . both die in or as the result of a common accident or disaster within thirty (30) days of the others [sic] death, then we . . . make the following gifts: We . . . do give, devise and bequeath all the rest, residue and remainder of our real, personal and mixed property, whosesoever situated and of whatsoever nature, as follows: 1/3 (33 1/3%) thirty three & 1/3 percent to Charles Joseph Guiliano; 1/3 (33 1/3%) Thirty-three & 1/3 percent to Nina T. McClanahan and the final 1/3 (33 1/3%) thirty-three & 1/3 percent to be divided equal among and between Thomas A. Gore and Frank R. Gore and Joyce A. Phillips.

In October 2004, Charles C. died. In 2009, Frank Gore died and was survived by three children. In 2013, Joyce Philips died and was survived by five children. Two months later, Pearl died. Thus, at the time of Pearl's death, only three children (Appellant, Thomas Gore, and Nina) survived.

Within weeks of Pearl's death, Appellant filed a "petition for Administration" with the Register of Wills, seeking to admit the will to administrative probate. On July 5, 2013, the Register issued an Administrative Probate Order, appointing a personal representative for Pearl's estate and admitting the will to probate.

On July 9, 2013, the Register sent a letter to Appellant informing him of her interpretation of the will and concluded that it lacked "an effective Rest and Residue clause." Accordingly, the Resister stated that she was bound to distribute the estate pursuit

to Maryland's intestacy statute, i.e. one-fourth shares to each of the four natural children (or their issue).

On August 14, 2013, Appellant filed a "Petition for Judicial Probate for Appropriate Relief" in which he argued that the will was valid and that instead should be distributed one-third each to Appellant and Nina, and with the remaining third to be divided equally among Thomas, Frank, and Joyce. Appellant relied on the "Joint Deaths" provision of the Will to reach this interpretation, though he has never argued that Charles C. and Pearl died within thirty days of each other. On October 22, 2013, the Orphans Court issued an order upholding the Register's position and declined to distribute the estate under the terms of the will.

Two weeks later, Appellant filed a "Petition for Interpretation of the July 9th 2013 Letter of Register of Wills and Orphans' Court Order dated October 22, 2013 as to Distribution under the laws of Intestate Distribution." No hearing was held and, on November 12, 2013, the Orphans' Court denied the petition and stated that the issues were already addressed by the Court's Order of October 22, 2013.

Appellant filed a notice of appeal to the circuit court. On June 17, 2014, the court heard argument by Appellant's counsel and on June 24, 2014, issued a Memorandum Opinion and Order that upheld the Orphans Court's ruling, and *inter alia*:

> ORDERED, that the rest, residue and remainder of the Estate of Pearl M. Guiliano be distributed in accordance with the laws intestate succession as follows:
>
> a. ¼ share to Appellant, Mr. Charles J. Guiliano
>
> b. ¼ share to Mr. Thomas A. Gore

c. ¼ share to the issue of Ms. Joyce A. Phillips who survived Mrs. Pearl M. Guiliano, *per stirpes*

d. ¼ share to the issue of Mr. Frank Gore who survived Mrs. Pearl M. Guiliano, *per stirpes*; and it is further,

ORDERED, that if Ms. Joyce A. Phillips and/or Mr. Frank R. Gore did not have issue who survived Mrs. Pearl M. Guiliano, the division of the rest, residue and remainder of the Estate of Pearl M. Guiliano be adjusted according to Md. Code Est. & Trusts § 3-103 and § 1-210, and it is further

ORDERED, that if Ms. Nina T. McClanahan can submit proof within 30 days of the date of this Order that she was legally adopted by Mrs. Peal M. Guiliano during Mrs. Pearl M. Guiliano's life, the division of the rest, residue and remainder of the Estate of Pearl M. Guiliano be adjusted according to Md. Code Est. & Trusts § 3-103 and § 1-210.[1]

QUESTIONS PRESENTED

We rephrase Appellant's questions[2] as follows:

Did the court err in finding that the will lacked an effective residuary clause?

[1] This condition was not satisfied.

[2] Appellant's questions read:

1. Does the valid will of testatrix expressing her intention in creating a 1/3 bequest-legacy to their [sic] five emancipated children effectively dispose of the remainder of her estate via testate distribution under the joint and reciprocal will ?

2. The anti-lapse statute does not apply to the facts of this estate so as to invalidate the intentions of the will creating the legacy to the five emancipated children [sic]

3. There being no adverse heir or interested party challenging testate distribution under the will, the ruling below requiring partial intestate distribution was improper [sic]

DISCUSSION

We review the legal conclusions of an Orphans' Court *de novo*. *Pfeufer v. Cyphers*, 397 Md. 643, 648 (2007). In construing a will, we aim to "ascertain and effectuate the testator's *expressed* intent." *Id.* at 649 (Emphasis added). "In other words, the search is not for the testator's "presumed [intention] but for his *expressed intention*" as "gathered from the four corners of the will, with the words of the will be given their 'plain meaning and import.'" *Id.* (Emphasis supplied) (Citations omitted).

The Orphans' Court determined that the Will was valid except with respect to the residuary assets of the estate. By the terms of the Will, Charles C.'s "rest, residue and remainder" passed to Pearl on his death. When Pearl died, however, her rest, residue and remainder was to pass to Charles C.

A residuary clause is a clause "by which that part of property is disposed of which remains after satisfying bequests and devises. . . . In this State, [n]o particular form of expression is required to constitute a residuary clause, it being sufficient if the intent to dispose of the residue appears." *Murray v. Willett*, 36 Md. App. 551, 553-54 (1977) (Internal quotation marks and citations omitted). Although not labeled as such, the language of "Joint Deaths" paragraph is clearly to be read as a residuary clause by which the husband and wife state that they "do give, devise and bequeath all the rest, residue, and remainder" of their estate and specified the distribution of these assets among their children.

The Orphans Court and circuit court, however, determined that because the husband and wife provided residuary legacies to each other, that these assets would pass back and

forth to each other *ad infinitum*, or in the words of the circuit court, a "ping-pong legacy." Once Charles C. died, his residual assets passed to Pearl; upon her death, the assets were to pass back to Charles C. The court considered the inherent impossibility of this purported residuary clause and found that it had lapsed. The court also noted that the "Joint Deaths" provision provided for a distribution of the assets, but because the parties did not die within thirty days of each other, that provision was inapplicable here. As such, the court found the residuary clause void and therefore subject to the intestacy provisions. *See* Md. Code (1974, 2011 Repl. Vol.) Estates & Trusts Article (ET) § 3-101 ("Any part of the net estate of a decedent not effectively disposed of by his will shall be distributed by the personal representative to the heirs of the decedent in the order prescribed in this subtitle.").

We disagree with this interpretation. Under Maryland's anti-lapse statute, because Charles was actually and specifically named as a legatee and alive when the will was executed, Pearl's gift to Charles C. does not fail simply because he died before her. ET §4-403(a), (b). Appellant does not argue that the anti-lapse statute does not apply.

Although the anti-lapse statute does not apply where "a contrary intention is *expressly* indicated in the will," there is no such intention evident here. Rather, the residuary clause of the will evinces an intention to distribute the residuary estate to one-third to Charles C., one-third to Nina, and one-third "to be divided equally among and between" the other three children. This distribution is consistent with the Joint Deaths provision, which, had it come to pass, would also have distributed the residuary estate in the same shares. Finally, the fact that only Charles C. and Nina received special "gifts"

further indicates that the parties intended for these children to receive more (for whatever reason) than the others.

Although this will may fall short of pellucidity, "there is no requirement that [] stylistic forms be used" to create a residuary clause. *Murray*, 36 Md. App. at 554. Though the "ping pong" gifts of the parties under the anti-lapse statute created some understandable confusion, the express language in the will indicates an intention to distribute the residuary estate in a way that is consistent with the rest of the will. Furthermore, we are guided by the purpose of the anti-lapse statute:

> Maryland's anti-lapse statute has been liberally construed [and] expresses a presumed intent of the testator. The presumption may be overcome by expression of a contrary intent in the will, but is supported by the presumption that the will was made in view of the statute. Anti-lapse statutes apply unless [a] testator's intention to exclude its operation is shown with reasonable certainty. Courts often say that in order to overcome the antilapse [sic] statute, a will must use 'clear and plain language' to this effect[.] One such example is when the gift is to the legatee or devisee, 'if he survives me.'

Kelly v. Duvall, 441 Md. 275, 284-85 (2015) (Internal quotations and quotation marks omitted). We find nothing in the will to suggest an intention that the parties' residuary legacies would lapse in a manner contrary to the presumption of ET § 4-403. Moreover, "when a will contains a residuary clause, the courts will employ every intendment against general or partial intestacy." *Murray*, 36 Md. App. at 552. As the Court of Appeals explained, a legacy would not lapse when there is an "absence of a specific survivorship provision, the specific identification of both legatees in the residuary clause, and the testator's inaction after the death of a legatee. *Kelly*, 441 Md. at 286 (Citation omitted).

Similarly, here there is no survivorship provision and the residuary clause contains a specific identification of the legatees and their shares in the residuary clause.

For these reasons, we hold that the residuary clause did not lapse and was valid. Thus, we reverse the ruling of the circuit court and direct it to remand to the Orphans Court to allow distribution of the residuary estate consistent with the expressed intention of Pearl and Charles as written in the Will: one-third to Charles J., one-third to Nina, and one-third to be divided evenly between and among Thomas, Frank, and Joyce.

JUDGMENT REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR REMAND TO THE ORPHANS COURT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.